IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6712 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMAR DAHYABHAI ISHWARBHAI SINCE DECEASED THROUGH HEIRS

Versus

BHALCHANDRA G TAMBEKAR THRO PAH ASHABHAI B PATEL

Appearance:

1. Special Civil Application No. 6712 of 1989

MR AJ PATEL for Petitioner No. 1-1/3

MR BJ JADEJA for Respondent No. 1

MR SIRAJ GORI, AGP for Respondent Nos. 2-3

RULE SERVED BY DS for Respondent Nos. 2-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 25/07/2003

ORAL JUDGEMENT

1. This petition has been filed under Article 227 of Constitution of India challenging the order dated 17-03-1989 passed by the Gujarat Revenue Tribunal in

Revision Application No.TEN.B.A.787 of 1985.

2. The petition had been filed by one Parmar Dahyabhai Ishwarbhai who, since having passed away, is represented through his heirs and legal representatives. Respondent No.1 is the Manager of Dakor Sansthan, i.e. the Temple Committee, looking after the Dakor Temple. Father of late Dahyabhai has been stated to be cultivating the land bearing Survey No.1992, admeasuring 3 Acres 37 Gunthas situated at Dakor. It is the say of the petitioner that the said Ishwarbhai cultivated the land in question since 1945. On 01-07-1975 proceedings were initiated under Section 70(b) of The Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') before the Mamlatdar and A.L.T., Thasra. The proceedings reached upto the level of the Gujarat Revenue Tribunal and went back to the Mamlatdar and A.L.T. Ultimately, after the remand, the Mamlatdar and A.L.T. passed an order on 15-11-1984 holding that the petitioner was not a tenant on the land in question but was a servant engaged by respondent No.1 to tend the garden of the temple. The case of the respondent was that in the land in question there was a hut constructed in corner of the land and rest of the land was used for growing flowers and Tulsi for being offered to the deity in the temple. It appears that some grass was also grown in certain portions of the land. The petitioner relies on two receipts stated to be evidencing payment of rent as well as revenue record in the form of Village Form No.7/12. Reliance is also placed on behalf of the petitioner on statements of the petitioner and two neighbours of the petitioner. As against that the respondent relies upon a receipt dated 27-02-1974 showing that the petitioner was engaged as a watchman of the garden. There is also a written document dated 03-03-1974 which, according to the petitioner, has not been executed by the petitioner. These and other pieces of evidence were taken into consideration by the Mamlatdar and A.L.T. while arriving at the aforesaid decision to the effect that the petitioner was not a tenant of respondent No.1. The petitioner, being aggrieved, preferred an appeal which came to be registered as Tenancy Appeal No.24 of 1985 before the Dy. Collector, Land Reform, Appeal, Kaira. The Dy. Collector reversed the order of the Mamlatdar and A.L.T. by order dated 22-04-1985 allowing the appeal.

3. Respondent No.1, therefore, went in revision before the Gujarat Revenue Tribunal and the said Revision Application bearing No.Ten.B.A.787 of 1985 came to be decided by the Tribunal on 17-03-1989. The Tribunal set

aside the order of the Dy. Collector, Kaira and restored the order of Mamlatdar and A.L.T. holding that the petitioner was not a tenant on the land in question. It is this judgement and order of the Tribunal which is under challenge in the present petition.

4. Ms.Trusha K. Patel on behalf of Mr.A.J.Patel submitted that the Tribunal had committed a serious error in law in exceeding its jurisdiction. It was submitted that the scope of powers which the Tribunal could exercise was circumscribed by the provisions of Section 76 of the Act. That admittedly the present case fell within Section 76(1)(c) of the Act, and hence, it was necessary for the Tribunal to first of all show as to why and where the error had been committed by the appellate authority in appreciating the evidence and that it was not open to the Tribunal to re-appreciate the entire evidence. It was also submitted that the Tribunal had failed to take into consideration the two receipts issued by respondent No.1 evidencing payment of rent as well as the oral evidence of the petitioner and his two neighbours. It was also submitted that no reliance could be placed on the written documents in the form of "Nokar-nama" as held by this Court in the case of THAKOR KESAJI RANAJI (Decd.) BY HIS HEIRS & LRs. THAKOR LILAJI KESAJI v. VALLABHDAS PARSHOTTAMDAS PARIKH, 1996(3) G.L.R. 849. A further submissions was made that as could be seen from Village Form No.7/12 in some years cultivation of crops alongwith grass was recorded and in these circumstances if there was a mixed purpose or composite use as held by this Court in the case of VAGHRI KHODABHAI HASUBHAI v. MOHMEDHUSEN ABDULBHAI BAKARWALA, 1982 (1) G.L.R. 141, the petitioner could not be denied the right of tenancy. In relation to the contention regarding scope of jurisdiction of the Tribunal under Section 76 of the Act, reliance was placed on :

(i) Raj Madhavsang Gulabsang V. Parmar Ranchhodbhai Galabsang & Ors., 1976 G.L.R. 689;

(ii) Balchandra Jambusaria V. Ramlubha Nanjibhai, 1979 G.L.T. 5;

(iii) Ratilal Bhogilal Dave Vs. Dahyabhai Chaturbhai Baria, 1994 (1) G.L.H. (U.J.) 8; and

(iv) Mahendrasinh Ranmalsinh & Anr. Vs. J.R.Patel & Ors., 2003 (1) G.L.R. 89.

5. As against this Mr.B.J.Jadeja, learned advocate appearing on behalf of respondent No.1, submitted that the scope of powers under Section 76 (1)(c) of the Act had to be appreciated and determined on the basis of the language of the provisions. Section 76(1)(c) of the Act stated in no uncertain terms that if there was error in appreciating important evidence resulting in miscarriage of justice, it was open to the Tribunal to intervene and correct the finding of the lower authority. It was submitted that as could be seen from the record the order of the Dy. Collector was at best sketchy and it was in that context that the Tribunal had dealt with only limited points, because the Tribunal was aware that it was not open to the Tribunal to re-appreciate the entire evidence. It was, therefore, submitted that there was no error committed by the Tribunal which would require this Court to re-appreciate the evidence.

6. Ms.Trusha Patel, in rejoinder, submitted that there was no dispute as to the fact that the Tribunal could always point out as to what was the error in appreciating important evidence resulting in the miscarriage of justice but in the present case the Tribunal had failed to record such a finding i.e. that the Dy. Collector had committed a serious error in appreciating important evidence. It was, therefore, submitted that the petition was required to be allowed and the order of Dy. Collector holding the petitioner to be a tenant be restored.

7. Having heard the parties at length it is apparent that this petition requires to be rejected for the reasons that follow hereinafter.

8. Section 76 of the Tenancy Act has come up for consideration times without number and the Courts have consistently held that the scope of revisional powers available to a Tribunal under Section 76 of the Act are restricted to the situations envisaged in either Clause-(a), (b) or (c) of sub-section (1). Clause (a) deals with a situation where an order of the Collector is found contrary to law; while Clause (b) deals with a situation where the Collector has failed to determine some material issue of law. Admittedly, in the present case, neither of the two clauses are relied upon by either sides.

9. Section 76 (1)(c) requires that there should be; (1) substantial defect in following the procedure provided in the Act, or (2) there has been failure to take evidence, or (3) there is error in appreciating

important evidence which has resulted in the miscarriage of justice. Thus, in the present case, the petitioner is placing reliance only on the third factor stated in Clause-(c) i.e. error in appreciating important evidence at the hands of the Dy. Collector resulting in the miscarriage of justice. It is only in such a situation that, according to the petitioner, the Tribunal would be vested with the jurisdiction. It is, therefore, necessary to test whether this contention is correct in light of the orders of the Dy. Collector and the Tribunal.

10. It has come on record that grass grown on the land in question was auctioned by respondent No.1 and that the petitioner had purchased the said grass in auction. The Mamlatdar and A.L.T. has considered this as a strong factor which goes to support the case of respondent No.1. The Dy. Collector has in this connection referred to the contention of the advocate of the petitioner before him when it is stated that the grass was grown on the bund of the land and hence, according to the Dy. Collector, the same could not be treated as a factor adverse to the petitioner, because according to the Dy. Collector grass grown on bund of the land in question could not be said to be grass grown on the land and hence whether the petitioner participated in the auction or not for purchasing the said grass was an irrelevant factor. In this connection the Tribunal states that the approach of the Dy. Collector was not proper because the record available does not support this view. It is also observed by the Tribunal that moreover, when tenancy is claimed over the entire survey number, the bund would naturally be part of the survey number of the land in question and cannot be excluded as the Dy. Collector has done. It is in this context that the Tribunal holds that the Dy. Collector has not properly appreciated this important evidence.

11. The learned advocate for the petitioner laid great emphasis on the language employed by the Tribunal and the language of the provision to contend that what the statute required was that there should be error in appreciating important evidence, but the Tribunal had merely stated that the Dy. Collector has not properly appreciated the evidence. The argument therefore was that the Tribunal had not recorded the finding as required by the statute and hence it could not have exercised revisional jurisdiction. It goes without saying that when one reads the order of an Tribunal, the order has to be read as a whole and one sentence or a part of sentence cannot be picked up and read divorced

from the context so as to challenge the entire order of the Tribunal. The Tribunal may not have employed the exact language mentioned in the provision but none the less it is the substance of the order, substance of the findings which have to be considered for determining whether the Tribunal had approached the issue before it correctly or otherwise. In the present case it is not possible to state that merely because the Tribunal had used words different from those used in the provision, the Tribunal had exceeded its jurisdiction or committed any error in law which would require this Court to intervene. One of the grievances made was in relation to appreciation of the two receipts showing payment of rent. The Tribunal has considered the same in paragraph 8 of the judgement and order and it is not necessary to enter into reappreciation of the said evidence.

12. Therefore, the view adopted by the Tribunal that if the petitioner was a tenant of the land in question it is not necessary for him to bid in the auction of grass grown on the land appears to be a logical and probable view. In a petition under Article 227 of the Constitution of India, this Court will not upset the said finding merely because another view may be possible. However, it requires to be stated that in the present case on facts and circumstances and after going through the order of the Dy. Collector and the Tribunal it is apparent that the view adopted by the Dy. Collector cannot be sustained in law and the Tribunal was justified in recording the finding as it did.

13. The reliance by the learned advocate on the decisions of this Court in relation to composite or mixed use does not assist the case of the petitioner for the simple reason that in the present case no authority has found that there was any mixed use. It is not open to this Court to go beyond findings recorded by the Tribunal and the lower authorities. Similarly, in relation to the submission that no reliance could be placed on "Nokar-nama", suffice it to state that the said decision also does not carry the case of the petitioner any further because the finding recorded in the said decision was that the petitioner therein was originally engaged for the purpose of cultivation of land in question four decades ago and was sharing the crops.

14. The law is settled that the powers conferred on the High Court under Articles 226 and 227 of the Constitution of India are extraordinary and discretionary as distinguished from ordinary statutory powers. This is not a case where this jurisdiction is required to be

exercised in favour of the petitioner. There is no jurisdictional error in the order of the Tribunal. It is not a case where jurisdiction has been exercised by the Tribunal in absence of jurisdiction, or where it has failed to exercise jurisdiction vested in it. Nor is there any error apparent on record. The High Court does not sit as an appellate Court : interference with pure findings of fact and appreciation of evidence is not permissible. Reappreciation of evidence cannot be undertaken. Even if on same set of facts, circumstances and evidence on record a different view may be possible that by itself is not enough to permit the High Court to intervene. A mere wrong decision does not clothe the High Court with jurisdiction, unless it is shown that the Tribunal has reached a decision without any evidence in support of same, or that it has considered evidence which is partly relevant and partly irrelevant. In short, arrived at a decision no reasonable person would arrive at. None of the aforesaid factors exist in the present case so as to warrant any interference.

15. In the circumstances, there is no infirmity, legally or factually, in the impugned judgement and order of the Tribunal dated 17-03-1989 and hence, it is not possible to interfere with the same. This petition stands rejected. Rule discharged. Interim relief stands vacated.

Sd/-

[D.A.MEHTA, J]

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'Bhavesh'